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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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|---------------------------|---|
| Proceeding | 91237315 |
| Party | Plaintiff American Marriage Ministries |
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| Submission | Other Motions/Papers |
| Filer's Name | Nancy V. Stephens |
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| Signature | /Nancy V. Stephens/ |
| Date | 04/03/2018 |
| Attachments | Final Opposition to Motion for Partial SJ.pdf(13524 bytes) |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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| AMERICAN MARRIAGE MINISTRIES |) | Opposition No. 91237315 |
| |) | |
| Opposer, |) | Mark: GET ORDAINED |
| |) | Application No. 87430729 |
| v. |) | |
| |) | |
| UNIVERSAL LIFE CHURCH |) | |
| MONASTERY STOREHOUSE, INC., |) | |
| |) | Filed: October 18, 2017 |
| Applicant. |) | |
| _____ |) | |

OPPOSER’S OPPOSITION TO
MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

Opposer American Marriage Ministries has sufficiently pled its fraud claim. Under Rule 8(a), Opposer has pled its claim of fraud with more than labels, conclusions, naked assertions or formulaic recitations of a cause of action and has stated a valid claim upon which relief may be granted.

Opposer’s claim in chief is a claim that the phrase “GET ORDAINED” is generic. In stating its claim of fraud, Opposer’s Notice of Opposition Paragraphs 11 – 17 sufficiently set out that the Applicant knowingly made a false, material representation of fact in connection with its application with the intent of obtaining a registration to which it otherwise was not entitled.

1. Identification of Third Party Users

Paragraphs 11 and 12 of Opposer’s Notice of Opposition states with particularity that there are competing businesses offering services similar to Applicant’s services who also use

“get ordained” to describe what their services enable customers to do. At this stage of the proceeding, no facts are required to prove this statement. However, since the Notice of Opposition was filed, Opposer has produced the listing of competitor businesses posting on social media using the phrase “get ordained”. *See* Declaration of Nancy V. Stephens, Exhibit A.” This list shows common third party use of the phrase “get ordained” in normal parlance in connection with ordination services and goods offered in connection with services to help ministers get ordained. These uses were found with a common web search.

2. Allegation that Third Party Users Had Superior Rights

Paragraph 13 of Opposer’s Notice of Opposition states that prior fair users of the term “get ordained” have legal rights superior to Applicant’s rights associated with the term. We find it unnecessary to add that in the United States trademark rights are determined by use. We have identified online ordination service providers who use the phrase in connection with ordination and related goods and services who used the term as a generic or descriptive phrase prior to, or at the same time, as Applicant.

3. Allegation that Applicant Knew of Third Party Uses or Believed Third Parties Had Superior Rights

Paragraph 14 states that Applicant had actual knowledge that third parties were using the phrase “get ordained” in connection with goods and services helping others to get ordained. To add further particularity, we will amend our Notice of Opposition to aver that Applicant knew that third parties in the field of helping ministers to get ordained online used “get ordained” as a descriptive term of art and that Applicant itself had participated in using the phrase descriptively

and continues today. Applicant knew and believed third party common law rights were superior to its rights and further believed that it (Applicant) could curtail the free and unencumbered fair use by third parties by applying for and being granted a US Trademark registration. Given Opposer's claim is that the mark is generic, not that Applicant's use will result in a likelihood of confusion, there is no need to plead a likelihood of confusion will result from Applicant's use but rather, as Opposer states in Paragraph 21, that Applicant's registration will remove a needed phrase from free and fair use and deny competitors the use rights they enjoy today.

4. Opposer Sufficiently Plead Applicant's Intent to Deceive

Paragraphs 15 and 16 of Opposer's Notice of Opposition state, not in these exact words, that Applicant believed that by filing its trademark it would block the unencumbered fair uses of the term of art "get ordained" in connection with minister ordination services (Paragraph 15) yet fraudulently stated that it (Applicant) had exclusive rights in connection with its services (ordination) and goods (sales of articles related to the ordination of ministers) (Paragraph 16).

We will amend our statement consistent with the paraphrased averments above.

Dated: April 3, 2018

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of OPPOSER'S OPPOSITION TO MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS was served by email on the attorney for Applicant listed below on this 3rd day of April 2018, at the following email address(es):

trademarks@mateskylaw.com, mike@mateskylaw.com

/Renee R. Stewart/

Renee R. Stewart